

# EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

IN RE: )  
 )  
CAMP LEJEUNE WATER LITIGATION ) Docket No.  
 ) 7:23-CV-897  
 )  
 )

\*\*\*\*\*

MONDAY, OCTOBER 30, 2023  
STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE:  
RICHARD E. MYERS, II, CHIEF DISTRICT JUDGE  
TERRENCE W. BOYLE, DISTRICT JUDGE  
JAMES C. DEVER, III, DISTRICT JUDGE  
ROBERT B. JONES, JR., MAGISTRATE JUDGE  
In Greenville, N.C.

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III, Zina Bash, James A. Roberts, III,  
W. Michael Dowling, Mona Lisa Wallace, Elizabeth J.  
Cabreser, Robin L. Greenwald, Hugh R. Overholt, A.  
Charles Ellis

On Behalf of the Defendant:

J. Adam Bain, Bridget Bailey Lipscomb, Nathan Jisu Bu

JENNIFER C. CARROLL, RMR, CRR, CRC  
Official Court Reporter  
United States District Court  
Raleigh, North Carolina  
Stenotype with computer-aided transcription

(Monday, October 30, 2023, at 11:03 a.m.)

**P R O C E E D I N G S**

JUDGE MYERS: All right. Good morning, everyone. We're here today in -- for our first of what I believe will become multiple status conferences in the case of the *Camp Lejeune Water Litigation*. I'll ask counsel who are here to just make your appearance for the record so we know who is here, and then we will -- we'll start with the United States.

MR. BAIN: Your Honor, Adam Bain for the United States.

MS. LIPSCOMB: Bridget Bailey Lipscomb for the United States.

MR. BU: Nathan Bu for the United States.

MR. BELL: Good morning, Your Honor. Edward Bell for the plaintiffs.

MS. BASH: Zina Bash for the plaintiffs.

MR. ROBERTS: Good morning, Your Honor. Jim Roberts appearing on behalf of the plaintiffs.

MR. DOWLING: Good morning, Your Honor. Mike Dowling on behalf of the plaintiffs as well.

MS. WALLACE: Good morning, Your Honor. Mona Lisa Wallace for plaintiffs.

MS. CABRESER: Good morning, Your Honors. Elizabeth Cabreser for plaintiffs.

11:04:46 1 MS. GREENWALD: Good morning, Your Honors.  
11:04:47 2 Robin Greenwald for the plaintiffs.

11:04:49 3 MR. OVERHOLT: Good morning, Your Honor.  
11:04:50 4 Hugh Overholt, liaison counsel.

11:04:55 5 MR. ELLIS: Good morning. Charles Ellis on  
11:04:57 6 behalf of plaintiffs as liaison counsel.

11:05:03 7 JUDGE MYERS: All right. Well, this is --  
11:05:06 8 the status conference is to find out where we are. We  
11:05:11 9 have multiple questions that need to approach -- I'm  
11:05:19 10 speaking as Chief just for a moment. And I'll hold to  
11:05:22 11 my colleagues to fully participate. We are here today  
11:05:25 12 with Judge Jones, who is going to become our lead  
11:05:28 13 discovery magistrate for the entire litigation, and we  
11:05:30 14 thought it was important that he be with us because I  
11:05:34 15 suspect that a significant amount of the time that is  
11:05:38 16 actually spent -- with members of the bench will be  
11:05:40 17 spent between you and Judge Jones trying to figure out  
11:05:43 18 how best to proceed in this matter.

11:05:47 19 We're at the point now where we have  
11:05:49 20 multiple standing orders that are designed to streamline  
11:05:53 21 this litigation, hopefully move us forward. And we have  
11:06:01 22 begun the process, it looks like, of making some offers  
11:06:04 23 and the process of settling at least the first discovery  
11:06:10 24 and participating in the Track One settlements that are  
11:06:13 25 appropriate in this matter.

11:06:15 1 With that in mind, I'll start with just  
11:06:18 2 asking where we stand in regards to what we believe are  
11:06:25 3 the claims, what claims we think are going to be moving  
11:06:28 4 from the Navy back to the Court, and how we're doing  
11:06:31 5 initially regarding Track One for settlement, Track One  
11:06:38 6 for litigation, how much do we think is going to move  
11:06:40 7 out of settlement and back into litigation. As I've  
11:06:42 8 been looking at the case filings, it looks like we have  
11:06:45 9 less -- that's my principal area of concern. I'll ask  
11:06:49 10 Judge Dever to sort of set for you -- the stage for you  
11:06:53 11 about what he's thinking about and then I'll proceed to  
11:06:55 12 Judge Boyle.

11:06:59 13 JUDGE DEVER: Sure. So, I mean, I have  
11:06:59 14 questions just about -- I know under Case Management  
11:07:01 15 Order No. 2, there was -- I think it's later. It might  
11:07:06 16 be in about a week, the status of the discovery pool  
11:07:09 17 profile form. So I would like to get an update on that  
11:07:11 18 to see where y'all are. I appreciate all of the work  
11:07:14 19 that's gone into getting us to this point. But that  
11:07:18 20 would be a helpful piece of information.

11:07:22 21 It would appear that, at least on my  
11:07:26 22 count -- and I stand ready to be corrected. I think  
11:07:29 23 that there have been a total of 47 short-form complaints  
11:07:35 24 filed. I know there's still time for those to be filed.  
11:07:39 25 And I know lawyers often work to deadlines. And so if

11:07:42 1 the deadline hasn't arisen yet, the lawyers think, *Well,*  
11:07:46 2 *I've still got plenty of time.* But I think it's  
11:07:48 3 important for everybody to realize for us to get a  
11:07:54 4 representative sample of jury verdicts, if the only  
11:08:00 5 thing that get filed -- if there are only 47 short-form  
11:08:04 6 complaints and they're all the best kinesis from the  
11:08:05 7 plaintiff's perspective, I would completely understand  
11:08:09 8 the Department of Justice saying these are not  
11:08:10 9 representative verdicts, at whatever point we get  
11:08:13 10 verdicts next year.

11:08:14 11 And so I just say that to y'all that I  
11:08:18 12 realize there's still some time, but it's something to  
11:08:24 13 consider. Because I just think that's a litigation  
11:08:26 14 reality of us going through this track system, which I  
11:08:30 15 think makes perfect sense to do it, assuming that we  
11:08:37 16 actually get some representative cases that actually get  
11:08:41 17 filed so that each side, as sort of topic of settlement  
11:08:46 18 is discussed, can say we think this actually is  
11:08:50 19 representative. Because if it's not, I mean, I think  
11:08:54 20 the Department of Justice could, understandably, say  
11:08:56 21 we'll try these cases for decades. And that -- it would  
11:09:04 22 certainly be, at some level, understandable, but it  
11:09:07 23 would be a shame for people who actually are old, sick  
11:09:12 24 Marines. And so I would just hope that the lawyers  
11:09:19 25 realize that. And I think y'all do. And again, I know

11:09:21 1 there's still time. But that was what was kind of  
11:09:25 2 striking to me.

11:09:27 3 And with that, I'll yield to Judge Boyle.

11:09:32 4 JUDGE BOYLE: Well, I don't have too much to  
11:09:33 5 say. I'm appreciative very much of my colleagues.  
11:09:40 6 Certainly Chief Judge Myers and Judge Dever taking the  
11:09:45 7 laboring oar in the structure and management of all of  
11:09:49 8 these cases. It's a daunting challenge.

11:09:55 9 I'm ready to go ahead and -- of course,  
11:09:57 10 remember, that we all have our separate cases. So while  
11:10:01 11 we're here together collectively, we have -- including  
11:10:09 12 Judge Flanagan, we have 25 percent of the filed cases  
11:10:14 13 each, or just about that. And so I'm here ready and  
11:10:21 14 willing and able, hopefully, to try cases when the time  
11:10:25 15 comes. And that time will come sooner rather than  
11:10:32 16 later. I think that from my perspective some insight  
11:10:36 17 into what the cases are really worth was a valuable --  
11:10:39 18 will be a valuable tool. And that's where I stand.

11:10:49 19 JUDGE MYERS: Judge Jones is going to be  
11:10:50 20 our, as I said, lead magistrate for discovery matters.  
11:10:54 21 Some of the things I think that are going to fairly be  
11:10:56 22 on the table pretty quickly are: What's being  
11:11:00 23 stipulated to? What do we agree? Do we have general  
11:11:03 24 causation or specific causations as to which diseases?  
11:11:07 25 Are there any diseases the United States is willing to

11:11:09 1 stipulate as meeting general causation, and we can move  
11:11:13 2 to specific causation and sort those out. The  
11:11:17 3 settlement proposal that we all read makes no said  
11:11:25 4 promises. But there are different tracks with different  
11:11:28 5 diseases.

11:11:29 6 I'll tell you in my own cases -- and I'll  
11:11:31 7 forecast this -- I'm interested in the possibility of  
11:11:36 8 bifurcating discovery, doing early discovery on the  
11:11:39 9 non-Track One diseases. To the extent it's necessary on  
11:11:41 10 the Track One diseases on causation, Daubert, getting  
11:11:45 11 those set so that we can know where we are and if we're  
11:11:47 12 moving forward, before we spend a lot of attorney time  
11:11:52 13 and a lot of plaintiff time as well as the Government's  
11:11:56 14 time on individualized cases. If we can't get through  
11:11:59 15 the science first -- I think going through the science  
11:12:01 16 first has been very successful in other litigation of  
11:12:04 17 similar type. So in my own cases, I will be very  
11:12:08 18 interested in early Daubert, particularly for those  
11:12:11 19 cases where we don't have stipulation as to general  
11:12:13 20 causation.

11:12:16 21 I think at this point it might be best for  
11:12:18 22 us to hear from you as to where you stand, what you  
11:12:23 23 think we need to know. In part, we wanted to do this  
11:12:29 24 early to be sure that everybody knows that Judge Jones  
11:12:32 25 has the full imprimatur of the Court. And it's unusual



11:12:35 1 that there are four different judges with a quarter of  
11:12:38 2 the cases in litigation of this kind. This is crafted  
11:12:43 3 from whole -- the whole thing is new for everyone.  
11:12:46 4 Ordinarily, these all end up before a single judge and  
11:12:49 5 you have a single district judge managing it. But Judge  
11:12:52 6 Jones will speak with a uniformed voice for us on the  
11:12:56 7 issues related to discovery, and we are intending to  
11:12:57 8 fully empower him publicly as the magistrate judge. Of  
11:13:03 9 course, there are issues that will be appealable -- I  
11:13:07 10 understand that -- from the way things are being  
11:13:09 11 managed. But he has our imprimatur, and we want it to  
11:13:09 12 be clear.

11:13:12 13 So with that in mind, I think we will -- we  
11:13:14 14 will start with the plaintiffs and let us -- you let us  
11:13:18 15 know how things are going and what you think we need to  
11:13:21 16 know at this stage.

11:13:22 17 MR. BELL: Good morning, Your Honor. We  
11:13:25 18 totally agree with what you're saying. The streamlining  
11:13:30 19 of these cases is important, but maybe you'll hear some  
11:13:34 20 things this morning that might give you some doubt that  
11:13:36 21 that's equally thought on both sides. We're concerned  
11:13:40 22 about that.

11:13:42 23 So, Your Honor, Judge Dever, we anticipate  
11:13:45 24 by Friday that most of the cases that are filed on  
11:13:49 25 short-form complaints, there will be an additional

11:13:52 1 number filed that will give the Court plenty to choose  
11:13:55 2 from. So I don't want to say, "Don't worry about it,"  
11:13:59 3 but I do -- I do know that we've had three different  
11:14:03 4 committees working, Judge, and they're working on  
11:14:05 5 weekends and working at night. Obviously, there is a  
11:14:10 6 case here or there that might have some problems that  
11:14:13 7 were unanticipated that will be not in the pool and they  
11:14:16 8 will file their short form after the deadline. But  
11:14:19 9 generally we expect to have plenty. In fact, we would  
11:14:22 10 like to ask the Court at another time when you're ready  
11:14:24 11 to hear, we have some additional ideas of how we might  
11:14:29 12 can streamline it further up to now, seeing what we  
11:14:33 13 have, things like that.

11:14:34 14 So -- and just following your order, we have  
11:14:38 15 had a number of stipulations. These are not necessarily  
11:14:43 16 trial stipulations; mostly, process stipulations. As  
11:14:47 17 you can imagine, sometimes your trial stipulations  
11:14:49 18 are -- they may be premature at this stage. But to be  
11:14:53 19 honest with you, Judge, we had three stipulations that  
11:14:57 20 kind of surprised us that we couldn't get done. One, of  
11:15:01 21 course, we asked the Government to stipulate to the  
11:15:05 22 ATSDR 2017 health study. This was the study upon which  
11:15:10 23 the statute was based. It's the largest epidemiological  
11:15:15 24 study in U.S. history. They declined to do so.

11:15:19 25 We asked the Government to give us whether

11:15:22 1 they would stipulate to general causation for the Track  
11:15:26 2 One diseases. Response was, "We're checking with our  
11:15:30 3 experts. We'll let you know."

11:15:35 4 And then we have a pretty important issue,  
11:15:38 5 Your Honor, having to do with what we're calling a  
11:15:42 6 base-wide model versus a site-specific model of  
11:15:48 7 exposure. Now, the ATSDR model was used as a base-wide  
11:15:54 8 model. If you're at the base for 30 days and you got  
11:15:58 9 one of the target diseases, then you've met the statute.  
11:16:03 10 The Government wants to take and cherry pick where you  
11:16:07 11 lived. So if someone lived at Tarawa Terrace and their  
11:16:12 12 exposure was less than someone who lived at Hadnot  
11:16:16 13 Point, they want to take that and run with that and not  
11:16:18 14 have a base-wide model. But, of course, everybody on  
11:16:20 15 the base has a lifecycle that they go through.

11:16:26 16 Someone mentioned the other day, well, why  
11:16:28 17 didn't they give these folks water bottles. They didn't  
11:16:31 18 have water bottles back then. And like a lot of us went  
11:16:34 19 to go play baseball, we drank out of a hose. If you  
11:16:37 20 played football in high school, you drank out of a hose.  
11:16:39 21 You drank out of something else. The Marines in  
11:16:42 22 training, they got -- they drank out of the water  
11:16:46 23 containers. Back then, the -- all the bases had to be  
11:16:51 24 built based on local building codes. North Carolina  
11:16:54 25 codes back then required every building to have water

11:16:57 1 fountains. So where you worked, where you lived, where  
11:16:59 2 you played, where you ate dinner, where you went  
11:17:02 3 shopping, everybody went to the water fountain and  
11:17:05 4 drank. And so to say that someone lived at Tarawa  
11:17:09 5 Terrace had less of an exposure on certain chemicals  
11:17:12 6 than otherwise is not what the ATSDR did.

11:17:15 7 And you can imagine if we had to do a  
11:17:17 8 separate, independent epidemiological study for each  
11:17:21 9 plaintiff, Your Honor, we would be in triple Roman  
11:17:24 10 times, not just one Roman time.

11:17:28 11 So Congress passed the statute that said if  
11:17:33 12 you were there 30 days, not if you were there 30 days at  
11:17:36 13 this location or this location. If you were there 30  
11:17:40 14 days and they recognize this problem. How is Mrs. Jones  
11:17:44 15 who had three kids that goes to three different schools,  
11:17:47 16 how are you going to say their exposure was less when  
11:17:50 17 they were in schools in another location that had a  
11:17:53 18 higher exposure? Which it's a good model, and it works.

11:17:57 19 And 30 days with these dangerous chemicals  
11:18:00 20 is a fairly short time. But once we, hopefully, can  
11:18:03 21 show you how dangerous they are, that kind of exposure  
11:18:06 22 really creates bedlam. But if you were there six  
11:18:09 23 months -- I know the last study we looked at, the  
11:18:14 24 average stay was around 1100 days. Only 1 percent of  
11:18:18 25 the cases we know of even met that five-year requirement

11:18:21 1 the Government put out on the EO.

11:18:25 2 So we would like the Court to initially  
11:18:28 3 address for us this issue of whether we're looking at a  
11:18:32 4 base-wide model or a site-specific model because that  
11:18:38 5 affects how we hire experts, who we get to do these  
11:18:41 6 things. Because of the Government's position, we've  
11:18:44 7 been talking to modelers to come up with a lifecycle  
11:18:47 8 model and to show the Court what does someone do on an  
11:18:52 9 average day at Camp Lejeune. Well, we've got to do that  
11:18:54 10 over 33 years. It's a hugely expensive proposition.  
11:18:59 11 We're talking about maybe a million dollars to put this  
11:19:02 12 model together, and we think that's not needed. We  
11:19:05 13 think the statute doesn't say we're supposed to do that.  
11:19:07 14 And Congress knew that. We need some help on that.

11:19:13 15 The ATSDR, Your Honor, we would love the  
11:19:17 16 Court to have a conversation with us and maybe talk  
11:19:21 17 about whether that is a legitimate model. I mean, ATSDR  
11:19:28 18 has this unique causation, as you're aware, it's called  
11:19:32 19 in there equipoise. Equipoise is a medical term; it's  
11:19:36 20 not a legal term. But in the ATSDR, all five of the  
11:19:40 21 Track One diseases are equipoise and above. It's the  
11:19:44 22 highest level of proof. But, yet, the Government,  
11:19:47 23 "Well, we aren't sure. We can let our scientists tell  
11:19:51 24 us what to do." That's not what the law says.

11:19:54 25 So I think those are the kinds of things,

11:19:56 1 Your Honor, that we are hearing now. And then, of  
11:19:58 2 course, with the recent filing on Friday, it's crazy.

11:20:02 3 But those are the things that we've got to  
11:20:04 4 get past. Because if we don't get past those, we're  
11:20:08 5 going to be here two years from now before we can try  
11:20:11 6 the first case. And so it's that important. So we  
11:20:14 7 would ask the Court to let us know when it's convenient  
11:20:16 8 for us to present what we need to present preliminarily.  
11:20:20 9 We would like to do that. We're ready to do it at your  
11:20:22 10 convenience and ask the Court for some guidance.

11:20:28 11 Your Honor, the next thing the Court asked  
11:20:30 12 was for how are we doing in discovery. We've sent out  
11:20:34 13 now three discovery requests. The first request, Your  
11:20:38 14 Honor -- Judge Boyle, you might get a little interest in  
11:20:42 15 this. You remember in what we call Camp Lejeune One,  
11:20:47 16 the earlier cases, and then there was an MDL established  
11:20:51 17 way back? Well, the Government at the MDL hearing told  
11:20:55 18 the MDL panel that they wanted the cases in Atlanta  
11:20:58 19 because that's where all of the documents were. We  
11:21:02 20 argued to keep it here in North Carolina. Well, the MDL  
11:21:06 21 court bought that argument and sent it down to Atlanta.  
11:21:09 22 And that's where ATSDR is located. But now we've asked  
11:21:13 23 for all of those databases. We know of six databases  
11:21:17 24 that ATSDR has used or put together, and we want access  
11:21:23 25 to those. We want unfettered access to those. Because

11:21:27 1 they have all of the science, all of the data. And then  
11:21:29 2 we have things we could add to it to actually make the  
11:21:33 3 epidemiological study better. But we have to get that  
11:21:37 4 access.

11:21:38 5 So we sent out a 30(b)(6) notice. We're  
11:21:44 6 hopefully going to get a date some time soon. We're  
11:21:47 7 working on that. At least we're waiting to get one.

11:21:50 8 And then that then began to present a  
11:21:54 9 problem that we didn't anticipate with the CMO. And the  
11:21:59 10 CMO, the Court ordered only one witness for the  
11:22:03 11 Government -- in other words, a governmental witness can  
11:22:05 12 only be deposed one time. But, Judge, I know the exact  
11:22:10 13 person that can give us information on those six  
11:22:12 14 databases. Could notice them today. I don't need them  
11:22:17 15 telling me which expert or which witness they're going  
11:22:20 16 to present and prepare. I know someone who works them  
11:22:23 17 every day, and we could do that, but then that would use  
11:22:26 18 up our one time to take his deposition. I think to  
11:22:29 19 streamline that and give us the opportunity to maybe  
11:22:33 20 rethink that. Obviously, we're not going to abuse it.  
11:22:38 21 If we did, then the Government would surely tell us.

11:22:42 22 But this guy is there. He's the primary  
11:22:45 23 mover at the ATSDR right now -- or the three people.  
11:22:49 24 Two of them are retired. He's ready to do this, and I  
11:22:53 25 think we can get this done in ten days instead of 30

11:22:55 1 days. So those are the kind of things we need some help  
11:22:58 2 on.

11:22:59 3 We have sent out now two requests for  
11:23:03 4 production. One is actually due today. That has to do  
11:23:06 5 with all of the databases we're asking about. We don't  
11:23:09 6 know what the Government's response is going to be. I'm  
11:23:12 7 not really confident that we're going to get a good  
11:23:15 8 response. We might, and I hope we will. But we'll see.  
11:23:19 9 Supposed to get it today. So we would like to address  
11:23:20 10 that if it comes up in a quick response.

11:23:23 11 Your Honor, we've put together an incredible  
11:23:27 12 team that says if we get all of the information we need  
11:23:31 13 that is -- that is publicly available, then about 80 to  
11:23:36 14 90 percent of our clients we can prove are on the base  
11:23:39 15 at a certain time and what they did and where they  
11:23:42 16 lived. We could do that ourselves. Even with someone  
11:23:44 17 who's dead who can't give us testimony, we can find out  
11:23:47 18 what unit they were in, where they stayed, how long they  
11:23:50 19 stayed. We can prove that up, and it's easy. But we  
11:23:53 20 have to get access to the database.

11:23:55 21 We're getting ready to choose our  
11:23:57 22 bellwethers. They have access. They can use those  
11:24:00 23 right now to help them choose bellwethers. We don't  
11:24:03 24 have access, so we're at a great disadvantage. So we  
11:24:07 25 would ask some help from the Court on that, if needed.



11:24:15 1 We know, Your Honor -- and the second  
11:24:17 2 request for production is now -- the first one had to do  
11:24:20 3 with databases mostly. The second one is focusing on  
11:24:24 4 health studies. We know there is a health study that's  
11:24:28 5 sitting there right now. It's completed and there's a  
11:24:32 6 big disagreement between the Government and the ATSDR  
11:24:35 7 whether to release it. It's a follow-up cancer study,  
11:24:38 8 and it could directly affect three fourths of our  
11:24:42 9 clients. They haven't released it. They won't release  
11:24:44 10 it. I don't know when it's going to be released. It  
11:24:47 11 may get released tomorrow after I've now brought it up.

11:24:49 12 But we do know, though, there was a study  
11:24:51 13 during the Trump Administration that ATSDR wanted to put  
11:24:55 14 out and the Administration blocked that study from being  
11:24:57 15 published. So we've asked for studies that have been  
11:25:00 16 published, studies that haven't been published, and we  
11:25:04 17 also understand now that when a study is done with  
11:25:09 18 ATSDR, then it's -- after it's peer-reviewed, it's then  
11:25:12 19 vetted. And apparently some folks who might be involved  
11:25:15 20 in litigation are trying to change some -- they don't  
11:25:19 21 want the language changed.

11:25:21 22 But we want all of that background  
11:25:22 23 information. We want to know what the drafts looked  
11:25:25 24 like. What was the -- what was the sequence. What was  
11:25:27 25 the lifecycle of that study and how did it get to the

11:25:31 1 current report. We want to know what the original  
11:25:34 2 scientists' opinions were. So that's the second request  
11:25:37 3 for production we've got.

11:25:39 4 There's a study being done. We think it's  
11:25:42 5 completed, called a vapor study. It's another one of  
11:25:45 6 the things we've requested. During the workup of the  
11:25:51 7 Camp Lejeune Justice Act, this was not something that  
11:25:53 8 came to our attention, that was not necessarily spoke of  
11:25:58 9 or even though ATSDR didn't speak about it very much.  
11:26:01 10 So there is a vapor study being done. It may very well  
11:26:05 11 affect some people, might not affect everybody. But it  
11:26:09 12 is important and goes to the exposure.

11:26:13 13 So that's kind of where we are right now,  
11:26:15 14 Your Honor, with discovery. I think it's gotten started  
11:26:19 15 well. We're trying to target our discovery. We haven't  
11:26:22 16 asked for a lot of things. But we were talking last  
11:26:27 17 night, Judge, and, you know, it would be nice if the  
11:26:34 18 Court would consider telling the Government to produce  
11:26:38 19 everything they got, instead of all of this back and  
11:26:42 20 forth which is going to take months and it's going to  
11:26:44 21 take Judge Jones a lot of work. Why not just put --  
11:26:48 22 give it -- all of it to us now without any kind of  
11:26:53 23 guidelines? Some of it may be relevant, some of it  
11:26:56 24 might not be. But most of it will probably be helpful.  
11:27:00 25 So that might be something worth considering, we think.

11:27:03 1 It's something worth doing.

11:27:05 2 So, Judge, the next thing on your list was  
11:27:07 3 resolution. Our resolution committee. So our  
11:27:20 4 resolution committee is working hard on doing exactly,  
11:27:24 5 Judge Dever, what you have mentioned. So maybe, if you  
11:27:28 6 don't mind, I'll try to give you a little example of  
11:27:31 7 what we're doing.

11:27:32 8 We think, just like most of you do, that  
11:27:36 9 learning a little bit about value of different kinds of  
11:27:40 10 case -- different kinds of -- what's the term I'm  
11:27:45 11 looking for? Well, for example, kidney cancer. It's in  
11:27:49 12 the Track One diseases. It's probably one of the most  
11:27:54 13 curable cancers that we have, if you catch it early. So  
11:27:59 14 if someone has kidney cancer, got treated -- and with  
11:28:03 15 kidney cancer, you get treated with excise the tumor  
11:28:06 16 without any radiation, without any kind of chemotherapy,  
11:28:09 17 and for the most -- most times, it's curable and move  
11:28:13 18 on.

11:28:13 19 Well, that, we think, is the minimum kidney  
11:28:15 20 cancer case. We want to know what that's worth. We  
11:28:19 21 also have people who have advanced stages and had -- had  
11:28:23 22 all kinds of posttreatment problems. It might have  
11:28:27 23 metastasized, they've died. So we're trying to take the  
11:28:30 24 cycle of each disease and come up with some stages that  
11:28:36 25 we can get the jury to give us value for those stages.

11:28:40 1 So if, for example, we had ten kidney cancer  
11:28:45 2 cases, we're trying to get some that are the minimum and  
11:28:48 3 some that are the worst so the jury can give us what are  
11:28:51 4 the values between those. And if we have the same jury  
11:28:56 5 do that, then we end up having a better idea of what it  
11:29:01 6 looks like. Then if we have four judges doing the same  
11:29:04 7 thing with four different groups, it would really have a  
11:29:08 8 great spread of what things look like. Different  
11:29:11 9 courts, different jury panels, I think it looks good.  
11:29:15 10 And I think that then gives us this idea, what are the  
11:29:18 11 values of these cases?

11:29:19 12 One of the diseases, Parkinson's,  
11:29:22 13 unfortunately is not curable. But now we know of these  
11:29:25 14 lifesaving brain surgeries that are being performed now  
11:29:30 15 in some of the leading hospitals that can -- it's  
11:29:33 16 amazing what is happening. But those are million,  
11:29:37 17 \$2 million surgeries. So we need to -- once you get  
11:29:40 18 Parkinson's, the lifecycle of that is different for  
11:29:43 19 everybody. Some people it's slower than others, some  
11:29:46 20 people it is bad. So we're trying to put all of that  
11:29:51 21 together. And our argument one day we hope we'll have a  
11:29:56 22 chance to make is that's why we believe multiple  
11:29:59 23 plaintiff cases are out to give us a better value of the  
11:30:03 24 whole spectrum of these diseases.

11:30:08 25 So we would like to one day, at your

11:30:11 1 convenience, talk to you about how these trials would be  
11:30:13 2 heard -- or held. I know that each court, each judge  
11:30:16 3 might have a different way of doing theirs, and we  
11:30:19 4 respect that. We just need some guidance on that.

11:30:24 5 The Track Two and Track Three cases, we  
11:30:27 6 would like to start working on how we're going to choose  
11:30:30 7 those diseases so we can go ahead and get our experts up  
11:30:34 8 front and get them loaded for them, get that started so  
11:30:37 9 we're not behind when we're ready to go on those. We  
11:30:41 10 need just to get some guidance from the Court on how you  
11:30:44 11 would like those to be selected.

11:30:49 12 We do have some questions, Your Honor, that  
11:30:52 13 we also need guidance on. One of the first things we  
11:30:55 14 have is we need some help on the probate issues. We  
11:31:02 15 believe this case is a case in federal common law and we  
11:31:07 16 can't just say we're going to take North Carolina and do  
11:31:11 17 it. There are a number of cases in the country that  
11:31:14 18 have -- that the courts have fashioned an alternative  
11:31:19 19 remedy. The case out of the -- one of the cases that  
11:31:24 20 involved asbestos with government ships, they had an  
11:31:30 21 appointed probated administrator for all of the cases  
11:31:35 22 that were filed and didn't require people to file their  
11:31:37 23 probate before trial. Those who are got settlements  
11:31:41 24 obviously have to go through some process, obviously, to  
11:31:43 25 distribute that. But initially, the cost of these

11:31:47 1 probate filings is expensive. Down in Florida, for  
11:31:51 2 example, it might be \$7,000 just to open up an estate.  
11:31:55 3 We're trying to figure out a way not to have our clients  
11:31:59 4 have to pay that. And so we have some -- we have some  
11:32:00 5 proposals we would like to present to the Court. If  
11:32:03 6 it's okay with you, we'll put those together and file  
11:32:06 7 them with the Court and ask for guidance on that.

11:32:11 8 The wrongful death statutes -- excuse me,  
11:32:14 9 the wrongful death part of the statute, again, the Court  
11:32:20 10 could adopt the aspects of the North Carolina. But in  
11:32:26 11 the federal common law, we should at least go through  
11:32:31 12 that required process so that when the Court decides  
11:32:34 13 what are the appropriate wrongful death parameters, that  
11:32:39 14 we have met the federal common law requirements. We  
11:32:42 15 would be glad to -- if the Court would desire, be glad  
11:32:45 16 to give a memorandum and ask the Court to consider it.

11:32:50 17 We would like to also, Your Honor, start  
11:32:53 18 working on our jury charges so that we can have some  
11:32:57 19 idea upfront what they'll look like so we know what we  
11:33:01 20 need to prove. And your help on that would be -- Judge,  
11:33:05 21 we're ready to present to you our proposed jury charges  
11:33:09 22 at your convenience.

11:33:11 23 I think that covers what I wanted to talk  
11:33:13 24 about, Your Honor. I have a couple of other things that  
11:33:15 25 I may get into later depending on where we go. Thank

11:33:19 1 you.

11:33:19 2 JUDGE MYERS: Thank you, counsel.

11:33:24 3 Mr. Bain, we'll hear from you first -- or  
11:33:27 4 next.

11:33:28 5 MR. BAIN: Thank you, Your Honors.

11:33:30 6 So going through the items that were on the  
11:33:32 7 agenda: As of Friday, there are 1309 cases before the  
11:33:38 8 Court. A little over 300 with each judge. With respect  
11:33:44 9 to the status of the administrative claims with the  
11:33:47 10 Department of the Navy, there are currently 117,000  
11:33:50 11 administrative claims on file with the Department of the  
11:33:52 12 Navy. The Navy is standing up a database which will  
11:33:58 13 significantly expedite efforts and allow it to intake  
11:34:02 14 batches of claims, organize claims, and analyze claims  
11:34:05 15 for the purposes of evaluation for settlement. So that  
11:34:07 16 should be online fairly soon.

11:34:10 17 The Navy has been coordinating with the  
11:34:13 18 Veterans Administration to gain access to obtain the  
11:34:17 19 Veterans Administration information which is needed to  
11:34:19 20 evaluate the claims of the claimants.

11:34:23 21 The Navy has been coordinating with the  
11:34:27 22 plaintiff's leadership counsel to coordinate procedures  
11:34:29 23 for obtaining information that the plaintiff's  
11:34:33 24 leadership counsel might have in order to evaluate the  
11:34:35 25 claims for settlement offers.

11:34:39 1 With respect to the stipulations between the  
11:34:41 2 parties, each side has proposed stipulations regarding  
11:34:46 3 scientific studies that were done. Mr. Bell is correct  
11:34:51 4 that the plaintiff proposed several stipulations related  
11:34:54 5 to the ATSDR's work. The Government agreed to six of  
11:34:58 6 those stipulations. The Government proposed  
11:35:01 7 stipulations related to the work of the National  
11:35:04 8 Research Council from the National Academies of  
11:35:06 9 Sciences, which also studied the Camp Lejeune water  
11:35:09 10 situation. As of yet, the plaintiffs have not provided  
11:35:12 11 us with a response on those stipulations.

11:35:16 12 Based on the allegations in the plaintiff's  
11:35:20 13 master complaint, the United States anticipates that it  
11:35:22 14 will be able to stipulate to many factual matters that  
11:35:25 15 are outlined in that complaint. We have retained  
11:35:29 16 experts who are evaluating the scientific issues to  
11:35:33 17 determine whether further stipulations are warranted  
11:35:35 18 with respect to general causation. So we are looking at  
11:35:41 19 that. We're asking them their opinions on that. And if  
11:35:44 20 they do give us those opinions, we could make  
11:35:46 21 stipulations on general causation.

11:35:50 22 I do want to address the base-wide versus  
11:35:54 23 site-specific model that Mr. Bell alluded to. The  
11:35:59 24 Government adopted a base-wide model for purposes of the  
11:36:03 25 elective option for settlement purposes because those



11:36:06 1 were an early offer of settlement. However, if  
11:36:11 2 plaintiffs choose to go the litigation route, the  
11:36:14 3 statute clearly says that they must prove that the  
11:36:17 4 exposure was as likely as not a cause of their injury.  
11:36:21 5 That involves an evaluation of exposure.

11:36:24 6 I think Judge Dever's recent opinion in the  
11:36:29 7 PFAS litigation made it clear that exposure is a  
11:36:30 8 critical element of proving causation in a toxic court  
11:36:35 9 case. In Camp Lejeune, only two of several water  
11:36:38 10 systems were contaminated. The one at Tarawa Terrace  
11:36:42 11 and the one at Hadnot Point. The other systems were not  
11:36:45 12 contaminated. So depending on where you were on base is  
11:36:48 13 critical to what type of exposure you might have had.  
11:36:51 14 If you're familiar with Camp Lejeune, it's divided by a  
11:36:54 15 river. There's some people who work and train and live  
11:36:58 16 on one side of the river. Some people are exclusively  
11:37:01 17 on the other side of the river. One side of the river  
11:37:03 18 did not have contaminated water, yet those people are  
11:37:06 19 eligible to file claims under the Camp Lejeune Justice  
11:37:11 20 Act. So that's an important point, I believe.

11:37:15 21 With respect to the discovery that's been  
11:37:18 22 conducted so far, the plaintiffs did serve 20 very broad  
11:37:23 23 requests for discovery from the Government. As Mr. Bell  
11:37:26 24 alluded to, they're asking for the entire ATSDR  
11:37:30 25 databases which has personal information of everyone

11:37:34 1 that the ATSDR studied, including thousands of people  
11:37:37 2 who are not parties to this litigation and likely  
11:37:40 3 thousands of people who did not file administrative  
11:37:42 4 claims. The personal identifiable information of those  
11:37:46 5 people are subject to certain protections. It can't  
11:37:49 6 just be turned over. So that's something that we have  
11:37:52 7 to look at and have to be very careful about the  
11:37:55 8 Government turning over other people's personally  
11:37:57 9 identifiable information who are not even parties to the  
11:38:00 10 litigation.

11:38:03 11 We will --

11:38:05 12 JUDGE DEVER: Why doesn't the protective  
11:38:06 13 order cover that? I mean, I understand that concern.  
11:38:09 14 But why doesn't the protective order address that issue?  
11:38:14 15 I mean, everybody that's on the plaintiff's side is an  
11:38:18 16 officer of the court, and we have a protective order.  
11:38:20 17 And this type of information gets released in all kinds  
11:38:26 18 of cases. I'm trying to understand what's different  
11:38:29 19 about it.

11:38:30 20 MR. BAIN: Well, we're discussing that with  
11:38:32 21 the ATSDR, and they have certain protections in place.  
11:38:36 22 They make certain agreements when they get this  
11:38:39 23 information from the agencies from which they receive  
11:38:41 24 it. So we are talking with our lawyers. We've given  
11:38:43 25 them the protective order. And so we're in continuing

11:38:46 1 discussions with that. But I just wanted to point out  
11:38:48 2 that these requests are very, very broad and include a  
11:38:52 3 lot of information that is of other people that is not  
11:38:56 4 really relevant to the plaintiff's case.

11:39:00 5 JUDGE MYERS: You anticipate potential  
11:39:02 6 future litigation on the -- from the stakeholders who  
11:39:06 7 have the privacy interests? That is, are there -- we  
11:39:09 8 always treat the United States as monolithic. It's not.  
11:39:13 9 But in some cases, it's good to treat it as a single  
11:39:16 10 party because it's in the coordination position. You  
11:39:20 11 anticipate stakeholder litigation that says protective  
11:39:23 12 order is insufficient?

11:39:25 13 MR. BAIN: I would hope not. But we need to  
11:39:28 14 make sure that we go through all of our processes and  
11:39:30 15 check with all of the agencies that have a stake in this  
11:39:32 16 information. The agencies that provided to the ATSDR,  
11:39:36 17 the ATSDR itself, it includes both defense information  
11:39:40 18 and also some information they obtain from different  
11:39:43 19 states through different agreements they had with them.  
11:39:45 20 So we just need to make sure that we -- we go through  
11:39:50 21 all the processes with those lawyers to make sure what  
11:39:53 22 we're doing is appropriate. And we have provided the  
11:39:56 23 protective order to them.

11:40:02 24 We've been in contact with the Government  
11:40:04 25 agencies, including the Navy, the Marine Corps, the

11:40:07 1 Veterans Administration, the National Archives, ATSDR,  
11:40:11 2 the EPA, and the GAO regarding these broad requests that  
11:40:15 3 the plaintiffs have made. We are responding later  
11:40:16 4 today. But there's a lot of information requested from  
11:40:20 5 a lot of different agencies, so we are trying to contact  
11:40:24 6 all of them and make sure that we're turning over what's  
11:40:27 7 appropriate and making appropriate objections where  
11:40:30 8 necessary.

11:40:32 9 We've entered an e-discovery order with  
11:40:35 10 plaintiff's leadership counsel, and we intend to start  
11:40:37 11 negotiating regarding electronic information, from what  
11:40:41 12 custodians we need to collect it from, what shared  
11:40:44 13 systems we need to collect it from, what search terms we  
11:40:47 14 need to run across that information so that we can get  
11:40:50 15 it produced in a timely manner. So we've begun that  
11:40:53 16 process. We've negotiated an order and will begin those  
11:40:56 17 discussions soon.

11:40:58 18 The plaintiffs have requested several  
11:41:00 19 30(b)(6) witness examinations. We've contacted the  
11:41:04 20 agencies regarding those and hope to be able to identify  
11:41:07 21 witnesses next month for those depositions.

11:41:14 22 With respect to settlement efforts, as you  
11:41:18 23 know, in September the Department announced the Elective  
11:41:21 24 Option to settlement program. That process is just  
11:41:24 25 beginning. The Department of Justice and the Department

11:41:28 1 of the Navy have been working with the plaintiff's  
11:41:30 2 leadership committee to get the information that we need  
11:41:33 3 to determine eligibility for settlement offers under the  
11:41:36 4 program. To date -- and I emphasize we're just  
11:41:41 5 starting -- 23 settlement offers have been made. Most  
11:41:44 6 of the offers are still pending. The claimants have 60  
11:41:49 7 days to accept or reject the offer. Three have been  
11:41:53 8 accepted and two have already been paid.

11:41:56 9 JUDGE BOYLE: How much were they? How much  
11:41:58 10 were the three that have been accepted and paid?

11:42:01 11 MR. BAIN: Just a minute, Your Honor. I  
11:42:06 12 think we have that.

11:42:09 13 JUDGE BOYLE: You don't have it?

11:42:10 14 MR. BAIN: I don't have it right --

11:42:11 15 JUDGE BOYLE: You didn't think that would be  
11:42:13 16 important today?

11:42:14 17 MR. BAIN: Well, I thought you would be  
11:42:15 18 interested in the numbers that were actually settled.  
11:42:17 19 But they're in the hundreds of thousands of dollars.

11:42:20 20 JUDGE BOYLE: Like 900,000? 800,000?  
11:42:23 21 500,000? 400,000?

11:42:25 22 MR. BAIN: Your Honor, there's a specific  
11:42:27 23 grid of criteria.

11:42:28 24 JUDGE BOYLE: Yeah, I understand. I'm just  
11:42:30 25 being facetious.

11:42:32 1 So how much?

11:42:34 2 MR. BAIN: We can get that information to  
11:42:35 3 you. I might have it with me.

11:42:36 4 JUDGE BOYLE: Don't worry about it.

11:42:38 5 MR. BAIN: I might have it with me.

11:42:40 6 JUDGE BOYLE: Don't worry about it.

11:42:43 7 MR. BAIN: I'm sorry, Your Honor. If I look  
11:42:45 8 through my materials, I might be able to --

11:42:45 9 JUDGE BOYLE: The whole point of this  
11:42:46 10 hearing is to make progress.

11:42:47 11 MR. BAIN: Yes.

11:42:48 12 JUDGE BOYLE: Yeah. Settling cases out of  
11:42:50 13 court is considered progress. We would like to know  
11:42:52 14 about that.

11:42:54 15 MR. BAIN: Yes, Your Honor.

11:42:56 16 JUDGE BOYLE: Go ahead.

11:42:57 17 MR. BAIN: So, yeah, we're working toward  
11:42:59 18 that, trying to make as many as we can that satisfy the  
11:43:02 19 criteria in the program that we put together.

11:43:06 20 JUDGE BOYLE: So far you've had three and  
11:43:08 21 you said there are 120,000 claims.

11:43:09 22 MR. BAIN: Uh-huh. We're just getting  
11:43:11 23 started, though, Your Honor. And we need to get -- one  
11:43:13 24 thing is we need to get the information from the  
11:43:16 25 plaintiffs to be able to determine whether the

11:43:18 1 plaintiffs meet the criteria under the program.

11:43:22 2           So, for example, we need to know what the  
11:43:27 3 disease they had is, how long they were at Camp Lejeune,  
11:43:30 4 when they got the disease.

11:43:32 5           JUDGE BOYLE: So you think the plaintiffs  
11:43:33 6 haven't been forthcoming?

11:43:35 7           MR. BAIN: We've been working with them and  
11:43:37 8 they've been forthcoming recently. We asked them for  
11:43:39 9 getting the date of birth information, Social Security  
11:43:43 10 number that we need to take to the Government agencies  
11:43:46 11 to get the medical records and the service records that  
11:43:49 12 we need. We've been talking with plaintiff's leadership  
11:43:52 13 counsel about getting other information and then putting  
11:43:57 14 packages together for us so we can determine eligibility  
11:44:00 15 for EO offers.

11:44:02 16           So we have been working with them. They  
11:44:03 17 recently provided us with information for approximately  
11:44:07 18 400 individuals who are plaintiffs in litigation. So  
11:44:10 19 those are people who have cases before this Court. So  
11:44:13 20 we would be getting the information for those  
11:44:15 21 individuals to see whether they qualify for an offer  
11:44:18 22 under the program.

11:44:20 23           On the other hand -- or also, at the same  
11:44:23 24 time, the Navy has been reaching out to plaintiff's  
11:44:26 25 counsel to discuss with them coordinating getting

11:44:29 1 packages of information sent to the Navy for people who  
11:44:32 2 may qualify for offers under the program. So we're  
11:44:35 3 making progress, and we think a lot more offers will be  
11:44:38 4 made in the coming months.

11:44:42 5 JUDGE DEVER: As the Navy is building out  
11:44:43 6 this database -- I mean, have you been -- has the Navy  
11:44:48 7 been in touch with -- I mean, I know the plaintiffs have  
11:44:50 8 been, I gather from an earlier hearing, trying to create  
11:44:54 9 a database that in terms of information that each side  
11:45:00 10 thinks is relevant to value a case.

11:45:04 11 I mean, I hope that y'all are talking to  
11:45:06 12 each other and that if you're -- won't make a lot of  
11:45:09 13 sense if the Navy builds a database that doesn't have  
11:45:13 14 information that the plaintiffs thinks are material to  
11:45:16 15 evaluating a value. So, I mean, I would just hope that  
11:45:19 16 y'all are talking to one another. And if the plaintiffs  
11:45:24 17 think that there's some glaring deficiency in the  
11:45:27 18 database that the Navy is building, that -- in terms of  
11:45:30 19 just the database. I mean, nothing -- nothing requires  
11:45:32 20 the Navy to make an offer anyway. But it seems like a  
11:45:38 21 waste of time if the Navy builds out a big database  
11:45:42 22 without getting information from the plaintiffs as to  
11:45:45 23 what the plaintiff thinks is -- are material factors  
11:45:48 24 that ought to be in any database to try and categorize  
11:45:52 25 cases.



11:45:52 1 So I just offer that to you as a -- as a  
11:45:55 2 matter of this process. Because as I talked about at  
11:46:02 3 the very first hearing -- I mean, by design, a design of  
11:46:06 4 the statute is that the cases are -- the vast majority  
11:46:11 5 are to be resolved administratively. So I hope that  
11:46:14 6 there is a real robust dialogue between the plaintiffs  
11:46:18 7 and the Department of Justice as the DOJ is building out  
11:46:21 8 a database. Because if the -- if the Navy or the DON,  
11:46:26 9 the Navy database doesn't have things that plaintiffs  
11:46:30 10 think are material, then -- then we're going to waste a  
11:46:36 11 lot of time. Because eventually that's going to need to  
11:46:38 12 be done. So I'm just -- if you could please let the  
11:46:41 13 Navy know that that strikes me as being really  
11:46:44 14 important.

11:46:44 15 MR. BAIN: I will do, Your Honor. And we've  
11:46:46 16 had several calls with plaintiff's counsel and Navy  
11:46:50 17 counsel and Department of Justice counsel talking about  
11:46:52 18 the information needed to make settlement offers under  
11:46:56 19 this program. And so that the Navy's database, which is  
11:46:59 20 receiving information, should be able to do all of the  
11:47:02 21 evaluation necessary under the administrative program.  
11:47:05 22 At the same time we've been talking with plaintiffs  
11:47:07 23 about setting up a database that eventually, hopefully  
11:47:11 24 will globally resolve the entire litigation. So we're  
11:47:14 25 in talks with them now and we've been following the

11:47:17 1 model by -- used by Judge Hellerstein in the first  
11:47:20 2 responder litigation. We're in talks with them now  
11:47:24 3 about a census of questions that will be necessary to  
11:47:27 4 populate a global resolution database. We've been  
11:47:30 5 exchanging the questionnaire with the plaintiffs. We  
11:47:35 6 got feedback from them. We had some additional  
11:47:39 7 responses to their feedback. And so we're continuing to  
11:47:42 8 try to finalize a database of the information that will  
11:47:47 9 be needed for a global resolution, including both  
11:47:50 10 litigation and any outstanding claims. At some point we  
11:47:54 11 may need a neutral to assist us with finalizing that  
11:47:58 12 census if we have any disputes that we can't resolve  
11:48:01 13 ourselves.

11:48:02 14 JUDGE DEVER: Well, I know one of the topics  
11:48:04 15 that we have on here is whether to appoint a settlement  
11:48:07 16 master. So I'm sure we'll talk about it at some point  
11:48:11 17 today.

11:48:12 18 JUDGE BOYLE: I wanted to ask: Have you  
11:48:13 19 ever answered the question as to whose budget this  
11:48:17 20 settlement comes out of? Does it come out of the  
11:48:19 21 general Treasury, or out of Marine and Navy budget?

11:48:22 22 MR. BAIN: It comes out the U.S. Treasury,  
11:48:24 23 the judgment fund. The fund that pays all government  
11:48:28 24 settlements or cases in litigation.

11:48:29 25 JUDGE BOYLE: So it's not competing with

11:48:30 1 military apportionment?

11:48:34 2 MR. BAIN: No, it's not coming out of the  
11:48:36 3 military appropriations.

11:48:38 4 JUDGE BOYLE: Okay.

11:48:39 5 MR. BAIN: And, Your Honor, I will have that  
11:48:40 6 specific information regarding settlements at future  
11:48:43 7 conferences, you can be assured, if I don't have it here  
11:48:46 8 today.

11:48:53 9 So one of the things that we need to do in  
11:48:57 10 order to move forward on the global settlement front is  
11:48:59 11 to agree on a database vendor. So a vendor that can be  
11:49:03 12 a third party that the Government and the plaintiffs can  
11:49:07 13 both contribute to and will house the data that will be  
11:49:10 14 used to ultimately reach a global resolution. Before  
11:49:14 15 the statute even passed, we consulted with the civil  
11:49:19 16 division's chief information officer about the  
11:49:21 17 Hellerstein model that was used to figure out if we  
11:49:24 18 could do that type of a system and what requirements  
11:49:26 19 there might be for it. The Government requires security  
11:49:31 20 for any system it uses that has personal information in  
11:49:33 21 it. It's called FedRAMP Moderate, and it's a  
11:49:38 22 requirement that is set by law that certain security  
11:49:41 23 systems must be in place. We informed plaintiff's  
11:49:47 24 counsel of this many, many months ago, even before  
11:49:49 25 plaintiff's leadership committee was selected, that this

11:49:53 1 is a requirement needed for a database vendor. We are  
11:49:57 2 waiting for the plaintiffs to propose vendors to us that  
11:50:00 3 meet this requirement. And we're still waiting for  
11:50:03 4 that. And we know that there's a deadline in the Case  
11:50:07 5 Management Order for agreeing to a database vendor. And  
11:50:11 6 we're continuing our discussions with the plaintiff's  
11:50:15 7 leadership committee regarding that.

11:50:21 8 And then with respect to the settlement  
11:50:23 9 master, we raised this issue with the plaintiff's  
11:50:28 10 leadership last week because we knew it would likely  
11:50:31 11 come up at this conference. And we agree the special  
11:50:34 12 master are neutral, would be useful in resolving issues  
11:50:38 13 that are necessary for the progress of the litigation.  
11:50:41 14 As I mentioned, I think the most immediate concerns are  
11:50:45 15 this global database and vendor that need to be  
11:50:48 16 selected. We have consulted with the U.S. Attorney's  
11:50:51 17 Office about potential settlement masters and have some  
11:50:56 18 names that we can discuss with the plaintiff's counsel  
11:50:59 19 when appropriate.

11:51:01 20 I will say --

11:51:03 21 JUDGE DEVER: Go ahead and have those  
11:51:04 22 discussions. It's appropriate. Go ahead and have them.  
11:51:06 23 You don't have to have them right now, but...

11:51:08 24 MR. BAIN: Okay.

11:51:10 25 The one thing I do need to point out is that

11:51:15 1 U.S. can agree to a settlement administrator that makes  
11:51:19 2 offers on behalf of the United States. So there's  
11:51:21 3 certain authority that the Attorney General has that  
11:51:23 4 cannot be delegated to a third party.

11:51:27 5 JUDGE DEVER: I mean, of course. If this is  
11:51:28 6 just a separate track facilitator that helps there to be  
11:51:34 7 a dialogue to -- to move cases.

11:51:39 8 MR. BAIN: Right.

11:51:40 9 JUDGE DEVER: Administratively.  
11:51:42 10 Administrative cases. And then even cases that are  
11:51:44 11 here. But it's -- that's the whole point of a  
11:51:46 12 settlement master under Rule 53. So I would encourage  
11:51:51 13 y'all to -- you know, after the hearing to talk about  
11:51:54 14 that because it's -- I think it's important.

11:51:59 15 MR. BAIN: Yes. And we've used special  
11:52:01 16 masters before in a Rule 53. In multidistrict  
11:52:05 17 litigations, they're very helpful. So we would totally  
11:52:09 18 support that.

11:52:10 19 And to address one of the things that  
11:52:17 20 Mr. Bell raised with respect to the probate matter, we  
11:52:20 21 also agree that this should be something that should be  
11:52:22 22 resolved fairly quickly. But our position is that North  
11:52:27 23 Carolina law should apply to that.

11:52:29 24 JUDGE DEVER: Well, you agree, though, it's  
11:52:30 25 a matter of federal common law.

11:52:32 1 MR. BAIN: No.

11:52:33 2 THE DEFENDANT: You don't. Why?

11:52:34 3 MR. BAIN: We believe the Federal Tort  
11:52:37 4 Claims Act applies to fill any gaps in the Camp Lejeune  
11:52:40 5 Justice Act. That law references the substantive law of  
11:52:45 6 this State where the act or omission occurred. So that  
11:52:49 7 would be North Carolina law. So there's no need to  
11:52:52 8 create some federal common law. The Federal Tort Claims  
11:52:57 9 Act, which supplies the waiver for the Camp Lejeune  
11:52:59 10 Justice Act, references state substantive law. And so  
11:53:05 11 North Carolina law should apply to who is an appropriate  
11:53:09 12 representative in a wrongful death case. And once we  
11:53:12 13 get that resolved, that will facilitate settlements in  
11:53:15 14 other matters for cases where it's a wrongful death  
11:53:19 15 situation or survivorship action.

11:53:25 16 Let me just check with cocounsel. I think  
11:53:27 17 those were the primary things I wanted to address first.

11:53:32 18 Oh. Your Honors did issue the three of the  
11:53:36 19 four orders that we submitted. The one order which also  
11:53:41 20 is necessary before we can produce a lot of information  
11:53:43 21 is an order on confidentiality. And so I just wanted to  
11:53:47 22 raise that in case the Court has any questions about  
11:53:49 23 that.

11:53:50 24 With respect to our responses to the  
11:53:53 25 plaintiff's request for production which are due today,

11:53:56 1 we have a number of materials that we're ready to  
11:53:58 2 produce, along with our written responses, but until we  
11:54:02 3 have that protective order in place, we can't produce  
11:54:04 4 all of that material.

11:54:08 5 JUDGE DEVER: Give us the docket entry  
11:54:10 6 number of that -- that draft. Do you have it?

11:54:23 7 MR. BAIN: It was submitted on the same date  
11:54:24 8 as the other three, which I believe was the...

11:54:32 9 I have --

11:54:32 10 JUDGE DEVER: Oh. So that's the 32-1? Is  
11:54:37 11 that right?

11:54:37 12 MR. BAIN: I believe so.

11:54:40 13 JUDGE DEVER: I mean, it's docket entry 32.

11:54:49 14 MR. BAIN: It was filed with docket 26.

11:54:54 15 JUDGE DEVER: 26.

11:54:55 16 MR. BAIN: Yeah.

11:55:33 17 Judge Boyle, I do have that information now  
11:55:36 18 if you would like that.

11:55:52 19 The three claimants who have accepted  
11:55:54 20 settlement offers, one was for \$250,000, one was for  
11:55:59 21 \$300,000, and one was for \$300,000.

11:56:03 22 JUDGE BOYLE: Thank you.

11:56:09 23 JUDGE DEVER: Mr. Bell.

11:56:10 24 MR. BELL: Your Honor, normally, I don't get  
11:56:13 25 too aggrieved at things, but if you'll allow me. Almost

11:56:21 1 12 years we've litigated Camp Lejeune, and the  
11:56:24 2 Government couldn't wait to tell me every time they  
11:56:26 3 could that the Federal Tort Claims Act doesn't apply,  
11:56:31 4 you can't win in this act; under North Carolina, you'll  
11:56:34 5 get kicked out. If there was any way we thought about  
11:56:38 6 drafting this bill, it included the Federal Tort Claims  
11:56:43 7 Act we have instituted. This is a standalone bill where  
11:56:46 8 federal common law applies.

11:56:48 9 What makes it interesting, Judge -- and I  
11:56:50 10 think it's something that, to me, is ethically  
11:56:53 11 controlling -- is when you have an Elective Option, that  
11:57:00 12 they're making offers which they have admitted is  
11:57:02 13 drastically reduced offers -- they've admitted that.  
11:57:05 14 That doesn't bother me so much. We can handle that.  
11:57:07 15 But in order to accept the offer, the lawyer has to sign  
11:57:11 16 an agreement that this is being made under the Federal  
11:57:15 17 Tort Claims Act. Which I think is wrong. I think  
11:57:19 18 that's illegal. I think it's improper, and I'm not  
11:57:23 19 going to do it. Because this is what we fought this  
11:57:26 20 case all about. This is why Congress said we're not  
11:57:30 21 going to do it.

11:57:31 22 If you fill in the gaps like they talk  
11:57:33 23 about, what they're doing is just bringing into play  
11:57:36 24 what they've for 12 years told these courts was not in  
11:57:40 25 play. And I would be surprised if -- if Congress knew



11:57:48 1 at the time they were drafting this bill that this would  
11:57:51 2 bring it back under what the Government had already said  
11:57:55 3 didn't apply. So I just bring that up to Your Honor.

11:57:59 4 However that decision -- we would appreciate  
11:58:02 5 an order on that. Or at least if we need to brief it,  
11:58:05 6 we'll be glad to.

11:58:06 7 JUDGE MYERS: Well, it seems to me that we  
11:58:08 8 need a case or controversy that says we need a  
11:58:11 9 declaratory judgment. We have a settlement offer  
11:58:13 10 between these two parties. That settlement offer says  
11:58:16 11 that it's pursuant to the Federal Tort Claims Act. We  
11:58:18 12 disagree, we believe it should fall under federal common  
11:58:20 13 law, and then brief it. Bring one that's before one of  
11:58:23 14 us.

11:58:23 15 MR. BELL: Judge, we actually had one that  
11:58:26 16 we were going to do. Our husband and wife both have  
11:58:31 17 identical cancers. They're not related. Both were  
11:58:34 18 exposed almost identically. One of them has since died.  
11:58:38 19 They were there over the five years, which was part of  
11:58:40 20 the option. But they didn't -- they didn't meet the  
11:58:45 21 latency requirement which was artificially done. And  
11:58:48 22 about 75 percent of the clients out there do not meet  
11:58:52 23 that. But, yet, while we might would have wanted to  
11:58:57 24 accept the offer, then they require the lawyers to say  
11:59:00 25 this is under the Tort Claims Act, is something we

11:59:03 1 think -- we brought that up to the Government explaining  
11:59:07 2 to them that we thought it was improper. They say  
11:59:10 3 they're looking into that, and we haven't heard back  
11:59:12 4 from them.

11:59:13 5 JUDGE DEVER: Well, I mean, I think on the  
11:59:14 6 larger point of the Chief is that we're happy to rule on  
11:59:18 7 things. That's what we do for a living. And -- but it  
11:59:21 8 has to be in the context of we just can't, sort of,  
11:59:24 9 write a letter back to y'all and say this is our view of  
11:59:26 10 things. It has to be in the context of an actual  
11:59:30 11 dispute between somebody.

11:59:31 12 But in terms of these -- to the extent  
11:59:33 13 they're important preliminary issues, you know, I think  
11:59:38 14 we would be ready to rule on those things, but it just  
11:59:44 15 needs to be filed. And we put in the Case Management  
11:59:48 16 Order very deliberately citing the Third Circuit case  
11:59:52 17 that as a general matter, we anticipate following the  
11:59:56 18 orders in our other cases, so that we're not reinventing  
11:59:58 19 the wheel every short-form complaint.

12:00:02 20 And so again, in terms of that issue, for us  
12:00:10 21 to resolve it, it just -- it needs to be in the context  
12:00:13 22 of some kind of a dispute. And if we get it, we'll act  
12:00:19 23 on it.

12:00:20 24 MR. BELL: I understand, Your Honor.

12:00:21 25 JUDGE DEVER: And then we would anticipate,

12:00:23 1 just so that y'all know, absent something unusual, we  
12:00:26 2 have the language in Case Management Order 2, we follow  
12:00:29 3 it.

12:00:30 4 And I would just say on the issue of the --  
12:00:33 5 the one deposition, and, I mean, we have a good cause  
12:00:36 6 out, and that doesn't mean impossible or anything like  
12:00:39 7 that. And to the extent that there's some 30(b)(6)  
12:00:44 8 deposition that could be taken early, I know my own view  
12:00:48 9 would be, well, I mean, if you needed to take a  
12:00:50 10 deposition of that person that works for the Government  
12:00:52 11 or used to work for the Government again, it will be  
12:00:55 12 like, okay. I mean, I would let it.

12:01:00 13 And to the protective order point, Mr. Bain,  
12:01:04 14 I mean, we will -- to the extent there's some  
12:01:07 15 confidentiality order we need to get entered, we'll get  
12:01:10 16 it entered. But I'm just at a loss to understand how  
12:01:16 17 much extensive negotiation or coordination there has to  
12:01:19 18 be with other people to the extent that their  
12:01:24 19 information was submitted as part of some study. If  
12:01:27 20 it's being produced to officers of the court pursuant to  
12:01:31 21 a confidentiality order, that would prohibit that being  
12:01:38 22 produced. And, obviously, the benefit of it is it  
12:01:44 23 allows the plaintiffs to get the information that they  
12:01:47 24 think they need. It's not, you know, sort of arguing  
12:01:50 25 about relevance or it has people that are being studied

12:01:53 1 for something else. It's like, well, I mean, there's a  
12:01:56 2 lot of irrelevant stuff that gets produced in discovery  
12:01:58 3 that never sees the light of day in an actual trial.  
12:02:01 4 But I just -- I'm just not aware of anything that would  
12:02:09 5 inhibit or should prevent y'all from producing this  
12:02:14 6 information about the studies subject to the  
12:02:19 7 confidentiality order, and then there can be later  
12:02:22 8 fights about legal issues. But not producing the  
12:02:26 9 information, we're just wasting time. And time is the  
12:02:32 10 gift necessary for all other gifts.

12:02:42 11 MS. BASH: Your Honor, may I say a little  
12:02:43 12 bit, just a few comments on things that have come up?  
12:02:46 13 One is on -- well, first of all on this FTCA issue, we  
12:02:51 14 have spoken a lot with DOJ, and they have brought it up  
12:02:55 15 in several contexts, that the FTCA fills the gaps. And  
12:02:57 16 the latest was this filing on Friday. So we will  
12:02:59 17 respond to that, understanding that it's not a case or  
12:03:01 18 controversy, but we've also been waiting for a place to  
12:03:04 19 tee it up, and we will do it in one of these estate  
12:03:07 20 cases. Because, again, that just -- the issue is very  
12:03:10 21 broad. It affects all of the clients. It will, I  
12:03:13 22 think, determine how the litigation goes. And so we're  
12:03:15 23 trying to get that in front of you early, and we will.

12:03:18 24 On resolution: So we were not involved at  
12:03:22 25 all in the EO. It was a secret to us. We found out it

12:03:26 1 was coming and asked if we could give some feedback  
12:03:29 2 because we do think that, you know, with a few tweaks,  
12:03:32 3 it could have applied much more broadly than it is going  
12:03:35 4 to apply, including with respect to latency.  
12:03:38 5 Nevertheless, we are helping DOJ. They asked us to give  
12:03:42 6 them some information for clients who are before the  
12:03:44 7 Court. And so we're giving them dates of birth, Social  
12:03:47 8 Security numbers so that they can see if people, you  
12:03:50 9 know, are compliant with what they want. We've had  
12:03:54 10 mixed reactions, you know, as you could expect.

12:03:57 11 Judge Dever, as you said in the first  
12:03:59 12 hearing, some people just want to get off the train now  
12:04:01 13 and they're, you know, deeply discounted offers. I  
12:04:04 14 think DOJ has said as much. But they're ripe for some  
12:04:08 15 people, and so we want to get as many of those in  
12:04:11 16 people's hands.

12:04:11 17 The tricky thing is this divide between the  
12:04:14 18 Navy and DOJ. The Navy seems to just be moving much  
12:04:18 19 more slowly. The bulk of the cases are there. And so  
12:04:22 20 we actually -- my firm tried to get a bunch of people  
12:04:26 21 here in court after that was announced to see if we  
12:04:29 22 could move them more quickly for DOJ. But that is also  
12:04:33 23 a little bit of the reason there's the delay in your  
12:04:35 24 seeing the short-form complaints. Once they come over  
12:04:38 25 here, they're no longer entitled to receive that offer.

12:04:40 1 And so, you know, every time before we file a short-form  
12:04:43 2 complaint, we need to call the client and say, you know,  
12:04:46 3 you're getting off -- you're no longer eligible to  
12:04:48 4 receive that. And so this isn't a delay where we're  
12:04:52 5 trying, you know, to pick our best plaintiffs or  
12:04:54 6 anything like that. We're very much, as Ed said,  
12:04:57 7 cognizant of wanting to resolve these quickly. We think  
12:05:01 8 the only way to resolve these quickly is to get a range,  
12:05:03 9 you know, in the trials so that when we're at the  
12:05:06 10 resolution stage with DOJ --

12:05:08 11 JUDGE BOYLE: Do you think there's any room  
12:05:09 12 for summary judgment in this process?

12:05:12 13 MS. BASH: Absolutely.

12:05:13 14 JUDGE BOYLE: That gets done quickly.

12:05:16 15 MS. BASH: Yes. Yes. We have -- we're in  
12:05:17 16 the process of writing a couple of motions for summary  
12:05:20 17 judgment -- partial summary judgment.

12:05:21 18 JUDGE BOYLE: I mean, the schedule for  
12:05:23 19 trials is remote; summary judgment is immediate.

12:05:29 20 MS. BASH: Yes. No, absolutely. We plan to  
12:05:31 21 start there.

12:05:34 22 JUDGE BOYLE: And if it doesn't play out,  
12:05:36 23 people in Richmond will tell us, and it will come back  
12:05:39 24 and no harm, no foul.

12:05:41 25 MS. BASH: Yes. No, absolutely. We have --

12:05:43 1 we have a great briefing committee and we have a couple  
12:05:46 2 of drafts just waiting -- waiting to be filed. And we  
12:05:50 3 will file them soon. Again --

12:05:52 4 JUDGE BOYLE: And it's finite. You file it,  
12:05:54 5 they have to respond or else it's admitted.

12:05:56 6 MS. BASH: Right. Yes. They're coming.

12:06:01 7 But so I just wanted to say on resolution  
12:06:04 8 specifically: We are working toward a database. We've  
12:06:08 9 chosen a vendor for the plaintiffs in court. Unlike in  
12:06:11 10 Hellerstein where the entire universe was before the  
12:06:16 11 court; here, they're not. Most of them are sitting  
12:06:19 12 before the Navy. And we don't want to flood the Court  
12:06:21 13 unnecessarily just for the purposes of doing something  
12:06:23 14 like that. And so I do think it will be a little bit  
12:06:26 15 more bifurcated with, you know, they have a database and  
12:06:29 16 we have -- we have, you know, our information of  
12:06:30 17 clients. But we very much do want to work with them,  
12:06:32 18 and we'll continue to do that.

12:06:34 19 And the FedRAMP issue is a tricky one. He  
12:06:38 20 just said -- you know, Mr. Bain just said that they need  
12:06:40 21 it for purposes of putting personal information in  
12:06:43 22 there. But our point is if we have the information  
12:06:46 23 ourselves -- right -- if you've produced it in  
12:06:48 24 discovery, we can put it wherever we want. We don't  
12:06:50 25 necessarily have to comply with some of those things.

12:06:52 1 The vendors that the Government uses and having worked  
12:06:54 2 in Government for a very long time, sometimes the  
12:06:56 3 vendors that are acceptable to the Government are kind  
12:07:00 4 of the older, dinosaur, slower vendors. And so we're  
12:07:04 5 trying to work with somebody that will move quickly.  
12:07:08 6 Get all of the information there --

12:07:08 7 JUDGE DEVER: Perfect is the enemy of  
12:07:10 8 better. Just don't -- I mean, again -- I mean, I  
12:07:12 9 realize that y'all are really doing your best for your  
12:07:16 10 clients. But perfect is the enemy of better. And it's  
12:07:20 11 better for y'all to talk and agree on a vendor and --

12:07:24 12 MS. BASH: No. Absolutely. So that's -- so  
12:07:27 13 that's part of it, though. Right? So some of the newer  
12:07:30 14 vendors who do this repeatedly who are not FedRAMP  
12:07:33 15 certified will be much faster, because they have the  
12:07:36 16 system built. And give them the information and it's  
12:07:38 17 there. And so it's actually in this case, I do think  
12:07:40 18 that those match up.

12:07:42 19 JUDGE DEVER: And I have no idea. I mean,  
12:07:43 20 there's -- we live in a world of acronyms and, you know,  
12:07:47 21 maybe it would incentivize one of these new folks to get  
12:07:52 22 the FedRAMP certification. It doesn't matter to me, but  
12:07:56 23 it would seem to me that if it matters to the DOJ, y'all  
12:07:59 24 need to work to figuring that out. I think it's also  
12:08:02 25 one of the benefits of having a settlement master that



12:08:06 1 would have -- in my vision of what that person would do,  
12:08:10 2 that person would have insight not just into the 1300 or  
12:08:15 3 so cases that our court has, but in the 117,000 to try  
12:08:19 4 and help facilitate resolution. Whether that involves  
12:08:24 5 one or two people, you know, we would be open to your  
12:08:27 6 suggestions on that. But I would ask y'all to add that  
12:08:30 7 to your list of things to talk about because having  
12:08:33 8 somebody facilitating a dialogue on the topic of global  
12:08:39 9 resolution is in everybody's interest.

12:08:41 10 MS. BASH: So absolutely. And it is a  
12:08:45 11 priority. It is not yet the bottleneck, because what  
12:08:47 12 we're doing is -- I'm again analogizing to the  
12:08:50 13 Hellerstein model, is negotiating the data fields. And  
12:08:52 14 that is moving forward, I think, very well. We're  
12:08:55 15 supposed to get a new draft from the DOJ soon. And  
12:08:59 16 because unlike in Hellerstein, we don't have everybody  
12:09:01 17 before us. You know, the 117,000 people, we can't order  
12:09:05 18 them. You know, we're not -- we don't rule over them.  
12:09:09 19 And so we want to have that data set complete to go to  
12:09:13 20 them one time and say, "Fill all of this out." And the  
12:09:18 21 carrot is -- unlike, you know, a court order, the carrot  
12:09:21 22 is this is what DOJ had said they will settle the cases  
12:09:25 23 on, this is what we think we need, and then we hopefully  
12:09:27 24 can spit out a number either earlier or after the trials  
12:09:30 25 get going. But that's what we're actively negotiating.

12:09:36 1 JUDGE DEVER: I mean, that's good to hear.

12:09:37 2 Because that's -- I mean, if the DOJ says we're not

12:09:38 3 going to settle unless we have this information, well --

12:09:42 4 MS. BASH: There's your carrot. That's

12:09:43 5 right.

12:09:44 6 JUDGE DEVER: -- the plaintiffs need to know

12:09:45 7 that. And then the plaintiffs can say, "Well, then I'm

12:09:46 8 going to have my trial 20 years from now," and they can

12:09:48 9 live with that. But it's really important for, like you

12:09:53 10 say, that process for if DOJ tells you if we don't have

12:09:58 11 this data -- and even if it's some issue that you see

12:10:00 12 being litigated later on an exposure issue about where

12:10:04 13 you were on the base or something, to the extent that

12:10:07 14 DOJ is -- and you have the information, just because you

12:10:11 15 agree to it in some administrative database doesn't mean

12:10:14 16 that we've ruled on it. It just means it's a potential

12:10:17 17 way to facilitate some resolution for the people that

12:10:22 18 have claims back to, potentially, 1953.

12:10:26 19 MS. BASH: Right.

12:10:27 20 JUDGE DEVER: So I'm glad that y'all are

12:10:28 21 talking, and I would encourage that to continue. And

12:10:32 22 again, you don't have to, sort of, fight the fights of,

12:10:35 23 you know, if we let this be in a database, then that

12:10:38 24 means we're agreeing to the relevance of this or that in

12:10:41 25 court. It's like, no, it doesn't. It means you're

12:10:46 1 agreeing to information in the database.

12:10:48 2 MS. BASH: Yeah. No. And I completely  
12:10:50 3 agree. The hesitation with is going -- it's an older  
12:10:54 4 population. It's an ill population. Pinging them many  
12:10:57 5 times for incremental data will reduce responses, we  
12:11:01 6 know from experience. And so we do -- we would like to  
12:11:04 7 complete -- it will never be perfect. But as much as we  
12:11:08 8 can, I think we're very close. And then as soon as we  
12:11:11 9 get agreement on that, we can go out to people one time,  
12:11:13 10 collect as much as we can, and then go from there.

12:11:16 11 But in the meantime, for purposes of giving  
12:11:18 12 them a sense, we have aggregate data. You know, this --  
12:11:21 13 the people here at the table represent a very large  
12:11:23 14 number of clients and we're able to give -- you know,  
12:11:25 15 figure out the average latency for a kidney cancer and  
12:11:28 16 so that -- so relevant data points.

12:11:31 17 And then the last thing I wanted to address,  
12:11:32 18 you asked about the discovery pool profile form. So  
12:11:35 19 we're -- that's due, I think, next week to the Court.  
12:11:37 20 And we're negotiating it with DOJ. We owe them a draft.  
12:11:41 21 We just spoke last week and agree that they were going  
12:11:44 22 to serve, kind of, in the place of interrogatories to  
12:11:46 23 streamline that process. And so we want to add a few  
12:11:48 24 more things to our proposal before sending it over. And  
12:11:52 25 we'll do that, I hope, tomorrow. You know, tomorrow or

12:11:55 1 the next day. So...

12:11:57 2 JUDGE DEVER: And then, Mr. Bell, I know  
12:11:58 3 y'all had submitted -- and whoever on your team can  
12:12:01 4 answer this. I know you have the draft common benefit  
12:12:05 5 order that you had submitted. And, obviously, DOJ filed  
12:12:07 6 the response it filed Friday. Do you think we need to  
12:12:14 7 resolve that -- the FTCA issue that they -- that the  
12:12:19 8 Department raised in order to enter that?

12:12:22 9 MR. BELL: No, Your Honor. Please refer to  
12:12:26 10 page 25 and 26. It clearly states how that holdback is  
12:12:30 11 to be applied to the gross settlement. It has nothing  
12:12:34 12 to do with fees. I do take issue with some of the  
12:12:37 13 things in that filing. We'll --

12:12:41 14 JUDGE DEVER: Right. But in terms of just  
12:12:42 15 -- and I want to ask the same thing to Mr. Bain. I  
12:12:44 16 mean, I know -- I read the filing. But is there  
12:12:46 17 anything in the draft that you think would prevent us  
12:12:50 18 from entering that, Mr. Bain? I mean, it's not with  
12:12:54 19 prejudice to your position on the FTCA issue that you  
12:12:59 20 raised, right?

12:13:00 21 MR. BAIN: No, Your Honor. I think that,  
12:13:02 22 you know, we just wanted to point out that in  
12:13:04 23 determining the holdback rate, need to balance those  
12:13:07 24 interests and know that the FTCA cap applies. Our  
12:13:12 25 position, just in response briefly to what Mr. Bell

12:13:16 1 said, is that the CLJA refers to the FTCA administrative  
12:13:20 2 process which provides the authority to settle  
12:13:22 3 administrative claims, which in turn provides the fee  
12:13:26 4 cap. So that's why that argument, we believe, is  
12:13:31 5 supported by the CLJA itself. So --

12:13:34 6 JUDGE DEVER: Right. And that's a legal  
12:13:35 7 issue. We'll have to resolve it. It's a little ripe,  
12:13:39 8 but it's not ripe yet.

12:13:41 9 MR. BELL: Your Honor is on the gross  
12:13:43 10 settlement, not on -- not on the amount of the fee. So  
12:13:48 11 in our opinion, it has nothing to do with what's  
12:13:52 12 presently before the Court by the Government.

12:13:55 13 MR. BAIN: Your Honor, if I can just make  
12:13:57 14 one other point. I think I need to clear one thing that  
12:14:00 15 was said in the record. I think a couple of times it's  
12:14:02 16 been said that the Government admits the EO offers are  
12:14:06 17 discounted or deeply discounted. I would just point out  
12:14:08 18 that that program is a base-wide approach. It waives  
12:14:13 19 all offsets -- Medicare, Medicaid, and VA offsets. So  
12:14:19 20 in our view, it's not a discount -- it's a very fair  
12:14:22 21 program.

12:14:37 22 JUDGE MYERS: Judge Jones, we're going to  
12:14:39 23 turn it over to you to say anything you would like to  
12:14:41 24 say as the person who will now become a significant  
12:14:45 25 feature in the lives of everyone present.

12:14:48 1 JUDGE JONES: Thank you.

12:14:50 2 I really had two -- two questions, and they  
12:14:56 3 were answered, sort of, at the outset. The first  
12:14:59 4 question was the status of discovery. And I think  
12:15:04 5 that's been -- that's been answered. And my second  
12:15:08 6 question was, really, as the one that's handling --  
12:15:15 7 well, probably will be handling -- who will probably be  
12:15:18 8 handling discovery speaks, I want to get kind of an idea  
12:15:21 9 of the nature of those disputes in cases such as this.  
12:15:26 10 And I guess I've kind of gleaned a sense of that from  
12:15:31 11 our discussions about the database and health studies.  
12:15:37 12 And maybe those will be disputes to bring to the Court  
12:15:42 13 in the future.

12:15:44 14 But that discussion sort of prompted a third  
12:15:47 15 question. This may be a fundamental question, sort of  
12:15:53 16 new to this litigation. Mr. Bain has described 12 years  
12:15:58 17 of litigation in these -- with these claims. How much  
12:16:01 18 of this information has been traded between the parties  
12:16:05 19 such that y'all really don't need to fight about it?  
12:16:08 20 The Government's got it or the plaintiffs have it, and  
12:16:11 21 maybe you've -- maybe you've covered that in what you're  
12:16:15 22 talking about the stipulations.

12:16:15 23 MR. BELL: No, Your Honor. We got some  
12:16:17 24 information at the beginning. In the first cases, there  
12:16:20 25 were actually just four depositions taken. And this was

12:16:23 1 a preliminary allowance by the Court for the purpose of  
12:16:28 2 looking into the motions to dismiss. We do have some  
12:16:32 3 data but we don't have a lot.

12:16:34 4 I'll give you an example, Judge. For many,  
12:16:38 5 many years the Government told the public and told  
12:16:41 6 everybody that the contamination came from an offsite  
12:16:46 7 dry-cleaning service. It was only after we -- in fact,  
12:16:50 8 in filing those original claims, we allege that. But  
12:16:55 9 later learned that, in fact, a lot of the pollution  
12:16:58 10 contamination comes from their own internal leaking  
12:17:02 11 wells -- and not wells, but tanks. So we got some  
12:17:07 12 information.

12:17:08 13 I'm under the impression or understand that  
12:17:10 14 there's -- I call it "the leaking tank database," but  
12:17:13 15 they call it something else. But we haven't gotten  
12:17:16 16 that, we don't think. So there's some things out there  
12:17:18 17 that we think might matter if we're going to have to go  
12:17:21 18 through this arduous process of this epidemiological  
12:17:26 19 workup that we don't think is necessary. A lot of this  
12:17:29 20 might not be necessary at all.

12:17:31 21 And of course Judge Dever mentioned we're  
12:17:33 22 not looking at fault, but we think that there's a lot  
12:17:40 23 out there that we don't have. Especially studies. We  
12:17:43 24 are aware that there were private contractors hired.  
12:17:46 25 I'm not aware of whether we have all of those or have

12:17:49 1 any of them yet. So there are some things we're looking  
12:17:51 2 for.

12:17:54 3 JUDGE JONES: Mr. Bain.

12:17:54 4 MR. BAIN: So, Your Honor, yes, we have  
12:17:56 5 turned over a lot of information as a result of the  
12:17:58 6 prior litigation, and we're offering and going to turn  
12:18:01 7 over all of that information again just to make sure  
12:18:03 8 that they have it. There's a lot of public information.  
12:18:08 9 The EPA has published a website which has their whole  
12:18:13 10 site file. The Navy has their environmental information  
12:18:18 11 online. The ATSDR reports are, of course, online. This  
12:18:23 12 site has been extensively studied by the Marine Corps  
12:18:27 13 itself, by the general accountability office -- or  
12:18:30 14 Government Accountability Office, by the EPA. So a lot  
12:18:33 15 of that information has already been gathered.

12:18:35 16 With respect to other databases that the  
12:18:37 17 plaintiffs claim that they don't have, we will try to  
12:18:40 18 make those available to the plaintiffs. But as far as  
12:18:44 19 the ongoing ATSDR studies, that's one thing that may not  
12:18:49 20 have been covered by the past litigation because that's  
12:18:50 21 more recent work. But the studies themselves are  
12:18:52 22 available, and I think then the issue is what about all  
12:18:55 23 of the work that's been done by ATSDR and how much of  
12:18:58 24 that can be made available to the plaintiffs. So we'll  
12:19:02 25 be looking into that.



12:19:03 1 JUDGE JONES: The next question I had is  
12:19:05 2 housekeeping. We have a conference scheduled the first  
12:19:08 3 and third Tuesday of every month. The first Tuesday of  
12:19:15 4 November is not that far away. I don't know if it's  
12:19:19 5 worthwhile to forego that meeting and meet on the third  
12:19:25 6 Tuesday of November. Do the parties have any opinion  
12:19:32 7 about that?

12:19:33 8 MR. BAIN: Your Honor, if I may suggest --  
12:19:36 9 of course, it's totally at the Court's discretion.  
12:19:38 10 Maybe the second Tuesday because the third Tuesday is in  
12:19:40 11 Thanksgiving week. But --

12:19:43 12 JUDGE JONES: Well, I wanted to set a day  
12:19:46 13 that we could make a permanent day so that the Tuesday  
12:19:50 14 in November doesn't conflict with -- or the day we  
12:19:54 15 picked in November doesn't fall in Christmas week or  
12:20:00 16 July the 4th week. And Tuesdays -- if you didn't know  
12:20:05 17 this, Tuesdays during the calendar are the best day to  
12:20:09 18 meet because there's -- it avoids Thanksgiving and other  
12:20:14 19 holidays. So Tuesdays seem to be the best time to meet.

12:20:19 20 MR. BELL: Judge, maybe it would be best if  
12:20:22 21 we did have the nearer Tuesday. We'll know today  
12:20:27 22 whether we need to talk with you about that important  
12:20:30 23 discovery.

12:20:30 24 JUDGE JONES: Okay.

12:20:31 25 MR. BELL: Maybe by then we'll have had some

12:20:33 1 answer to our request for our 30(b)(6). So maybe a  
12:20:36 2 conversation will --

12:20:36 3 JUDGE JONES: Well, let's keep it on the  
12:20:38 4 calendar. And if the parties come to some agreement,  
12:20:41 5 the -- maybe three days before the Tuesday that there's  
12:20:44 6 no need to meet -- we don't need to meet just to meet.  
12:20:47 7 I want our meets to be productive. So we'll put -- keep  
12:20:51 8 it on the calendar. And if there's a consensus that we  
12:20:53 9 don't need to meet, then maybe we can not do that.

12:20:57 10 MR. BELL: The order requires a status  
12:20:58 11 conference -- status report for next Tuesday by  
12:21:01 12 tomorrow. Can we, at least for the first one, forego  
12:21:04 13 that one?

12:21:05 14 JUDGE JONES: The status report?

12:21:06 15 MR. BELL: Yes, sir.

12:21:07 16 JUDGE JONES: Yes, sir.

12:21:08 17 MR. BELL: Thank you.

12:21:12 18 JUDGE MYERS: Anything further that needs to  
12:21:13 19 be brought before the Court during the status conference  
12:21:15 20 by any other participant on either side?

12:21:22 21 (No response.)

12:21:24 22 JUDGE MYERS: All right. Seeing none,  
12:21:26 23 seeing none, thank you everybody. We are now going to  
12:21:29 24 turn this over to Judge Jones for the purposes of these  
12:21:33 25 meetings. As I noted earlier, and as Judge Dever

12:21:39 1 reified, we're not -- I wish we were -- this was a  
12:21:42 2 one-judge operation sometimes and that these were not  
12:21:45 3 all individual cases. It would simplify things for  
12:21:49 4 you-all to only be dealing with only one of us. I  
12:21:52 5 understand that. But the nature of this litigation is  
12:21:54 6 such that having particularized facts with a live issue  
12:22:01 7 that we can then rule on will give you your best  
12:22:04 8 opportunity to get answers. They're not going to be a  
12:22:05 9 forecast of what one judge might think, but then be an  
12:22:10 10 order of the court that the others of us are going to  
12:22:12 11 look at and give great deference to. They will not be  
12:22:16 12 controlling but they will receive great deference  
12:22:19 13 amongst the judges of this court. We have discussed  
12:22:21 14 that. It's in the standing orders that are now before  
12:22:23 15 you.

12:22:24 16               So unlike the ordinary litigation where you  
12:22:27 17 have a single judge and that judge can tell you where  
12:22:29 18 they're leaning, this isn't that, unfortunately. So the  
12:22:34 19 answers to some of these questions, I think, might be  
12:22:36 20 slightly different amongst the four of us. Judge  
12:22:40 21 Flanagan is not here to nod vigorously. But they might  
12:22:44 22 be slightly different amongst the four of us. We will  
12:22:49 23 do our best, though, to rule expeditiously and try not  
12:22:53 24 to become your bottleneck. We want to keep you moving.  
12:22:56 25 But to make this litigation work given its unique

12:23:00 1 nature, I think we need to have things that are before  
12:23:04 2 the Court, briefed and ruled upon in ways that are going  
12:23:07 3 to be helpful to you. We commit to doing that.

12:23:10 4 JUDGE DEVER: And I would add that I  
12:23:12 5 would -- you should anticipate that we're -- we're not  
12:23:16 6 going to have multiple 702 hearings per disease. I  
12:23:20 7 mean, one judge is going to get a disease or -- and rule  
12:23:27 8 on that. You're not going to get four Daubert rulings  
12:23:30 9 from four judges. That ultimately when we get to that  
12:23:34 10 stage, that we have talked about that. And that just  
12:23:37 11 seems to me to make the most sense. And -- but I echo  
12:23:42 12 everything else -- everything that the Chief said about  
12:23:44 13 the process. I mean, we're ready to -- to move on these  
12:23:51 14 things and grateful to Judge Jones for agreeing to have  
12:23:56 15 those meetings. And part of it, why we had them all on  
12:24:01 16 a certain date, is that to the extent any district judge  
12:24:05 17 wants to attend, they just might attend.

12:24:11 18 JUDGE MYERS: All right. Thank you,  
12:24:13 19 everybody.

12:25:04 20 (The proceedings concluded at 12:25 p.m.)

21 \* \* \*

22

23

24

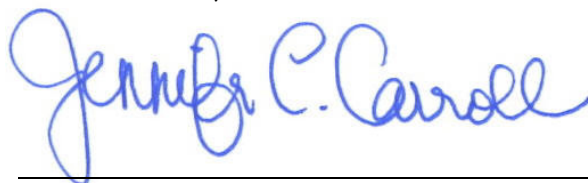
25

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3  
4

5 CERTIFICATE OF OFFICIAL REPORTER  
6

7 I, Jennifer C. Carroll, RMR, CRR, CRC,  
8 Federal Official Court Reporter, in and for the United  
9 States District Court for the Eastern District of North  
10 Carolina, do hereby certify that pursuant to Section  
11 753, Title 28, United States Code, that the foregoing is  
12 a true and correct transcript of the stenographically  
13 reported proceedings held in the above-entitled matter  
14 and that the transcript page format is in conformance  
15 with the regulations of the Judicial Conference of the  
16 United States.

17  
18  
19 Dated this 1st day of November, 2023.

20   
21

22 /s/ Jennifer C. Carroll  
23 Jennifer C. Carroll, RMR, CRR, CRC  
24 U.S. Official Court Reporter  
25